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PILLSBURY WINTHROP SHAW PITTMAN LLP
P.O. BOX 10500
MCLEAN, VA 22102

SEP 28 2005

In re Application of
PRAKASH et al.
Application No. 09/747,304
Filed: December 20, 2000
Attorney Reference No. 061450 0270200

DECISION ON PETITION

This is a decision on the petition filed February 23, 2005, requesting that the holding of abandonment in the above-identified application be withdrawn.

The petition to withdraw the holding of abandonment is **GRANTED**.

A non-final action was mailed on January 23, 2004, setting a one-month period of response. Applicant filed a response on July 23, 2004 along with a Petition for a Three-Month Extension of Time. A Notice of Non-Compliant Amendment was mailed on August 2, 2004.

Petitioner states that the Notice of Non-Compliant Amendment was never received by applicant's representative and attests to the fact that a search of the file jacket and docket records indicates that the Notice of Non-Compliant Amendment was not received. The petition is accompanied by a copy of the docket record where the Notice of Non-Compliant Amendment would have been entered.

Pursuant to M.P.E.P. §711.03(c), it is the petitioner's burden to demonstrate that the Notice of Non-Compliant Amendment was not in fact received at the correspondence address of record at the time it was mailed. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been received had it been received and docketed must be attached to and referenced in the practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. §711.03(c),

Petitioner has provided the required statement attesting to the fact that a search of the file jacket and docket records indicates that the Notice of Non-Compliant Amendment was not received. Further, petitioner has provided a copy of the docket record where the non-received Notice of Non-Compliant Amendment would have been entered had it been received and docketed.

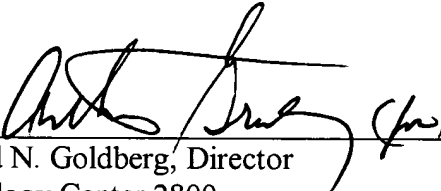
Petitioner has made the requisite showing required under M.P.E.P §711.03 (c).

Further, pursuant to applicant's authorization to charge fees that may be required relative to the response filed July 23, 2004, Deposit Account No. 50-2213 has been charged \$570.00 for an additional two months of extendable time period to reply to the non-final Office action. The non-final Office action set a one-month period for reply such that the Petition for a Three-Month Extension of Time and the corresponding fee paid was insufficient to cover the amount of extendable time period needed for a timely reply.

In view of the above, the holding of abandonment is withdrawn.

The application file is being forwarded to the Technical Support staff for re-mailing the Notice of Non-Compliant Amendment.

Questions regarding this decision should be directed to Jose' G. Dees at (571) 272-1569.


Howard N. Goldberg, Director
Technology Center 2800
Semiconductor, Electrical and Optical
Systems and Components